

2001 DRAFTING REQUEST

Bill

Received: **05/21/2001**

Received By: **nelsorp1**

Wanted: **As time permits**

Identical to LRB:

For: **Joanne Huelsman (608) 266-2635**

By/Representing: **Scott Manley**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Beverages - miscellaneous
Courts - immunity liability**

Extra Copies: **RCT**

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Immunity for a person who fails to provide transportation to an intoxicated person

Instructions:

Wants exemption from liability reversing result in Stephenson, Ct. App. 001397, May 15. Person refused to drive drunk friend after saying he would. Drunk friend drives and injures another. Court said person is not immune from liability. See attached.

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/1	agary 07/16/2001	wjackson 07/18/2001	kfollet 07/18/2001		lrb_docadmin 07/18/2001		
/2	agary	jdyer	pgreensl		lrb_docadmin		

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1ST CASE of Level 1 printed in FULL format.

Ricky D. Stephenson, Individually and as Personal Representative for the Estate of Kathy M. Stephenson, Plaintiff-Respondent, v. Universal Metrics, Incorporated, American Family Mutual Insurance Company and Ohio Casualty Insurance Company, West American Insurance Company, Defendants, John H. Kreuser and Sentry Insurance, a mutual insurance, Defendants-Appellants.

No. 00-1397

COURT OF APPEALS OF WISCONSIN, DISTRICT ONE
2001 WI App 128; 2001 Wisc. App. LEXIS 503

May 15, 2001, Decided

May 15, 2001, Filed

NOTICE:

[*1] THIS OPINION IS SUBJECT TO FURTHER EDITING. IF PUBLISHED, THE OFFICIAL VERSION WILL APPEAR IN THE BOUND VOLUME OF THE OFFICIAL REPORTS.

SUBSEQUENT HISTORY: As Corrected June 26, 2001.

PRIOR HISTORY: APPEAL from an order of the circuit court for Milwaukee County: VICTOR MANIAN, Judge.

DISPOSITION: Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant and his insurer sought interlocutory review of Milwaukee County Circuit Court (Wisconsin) denial of their motion for summary judgment. They argued that *Wis. Stat. § 125.035(2)* (1997-98) precluded imposition of liability on them for defendant insured's failure to act as designated driver, resulting in plaintiff's decedent's death.

OVERVIEW: Decedent tortfeasor had too much to drink at an employee Christmas party. Individual defendant assured the bartender that he would drive tortfeasor home, but he did not. Tortfeasor and plaintiff's decedent wife were thereafter killed in a collision. *Wis. Stat. § 125.035(2)* (1997-98) insulated purveyors of alcohol to adults from tort liability, and individual defendant and his insurer moved for summary judgment on that basis. The court held that individual defendant never provided alcohol to tortfeasor, so he fell outside the statutory immunity. Instead, there was a triable issue as to whether he was liable as a person who undertook to render services to another, who should have known that his intervention was necessary for the protection of tortfeasor and others, and who thereafter failed to exercise reasonable care, resulting in harm to both tortfeasor and plaintiff's decedent.

OUTCOME: The court affirmed denial of summary judgment. Individual defendant did not provide alcohol within the meaning of the statute, so there was no reason to excuse him from the duty to perform his voluntary undertaking with reasonable care.

CORE TERMS: drive, bartender, third person, alcohol, summary judgment, insurer, ride home, negligent failure, designated, beverages, driver, immune, adult, duty, procuring, immunize, knowingly, encompass, tribunal, immunity granted, civil liability, negligently, dispensing, promised, nonfinal, fulfill, selling, boiler, country club, failure to exercise

CORE CONCEPTS -

Legal Ethics: Client Relations: Moral Accountability
See *Wis. Sup. Ct. R. 20:3.3(a)(3)*.

Legal Ethics: Client Relations: Moral Accountability
Wis. Sup. Ct. R. 20:3.3(a)(1) forbids counsel from knowingly making a false statement of fact or law to a tribunal.

Civil Procedure: Summary Judgment: Summary Judgment Standard

Summary judgment is appropriate to determine whether there are any disputed factual issues for trial and to avoid trials where there is nothing to try. While a Wisconsin appellate court applies the same methodology as the trial court when reviewing summary judgment, it owes no deference to the conclusion of the trial court. The court first examines the pleadings to determine whether they state a claim for relief. If the pleadings state a claim and the responsive pleadings join the issue, the court then must examine the evidentiary record to analyze whether a genuine issue of material fact exists or whether either party

is entitled to a judgment as a matter of law.

Torts: Negligence: Duty: Control of Third Parties

One who undertakes, gratuitously or for consideration, to render services to another, which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if: (a) his failure to exercise reasonable care increases the risk of such harm; or (b) he has undertaken to perform a duty owed by the other to the third person; or (c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

Civil Procedure: Appeals: Standards of Review: De Novo Review

Governments: Legislation: Construction & Interpretation
The interpretation of a statute presents a question of law, which a Wisconsin appeals court reviews de novo.

Torts: Negligence: Defenses

Torts: Negligence: Duty: Purveyors of Alcohol
See *Wis. Stat. § 125.035(2)* (1997-98).

Torts: Negligence: Defenses

Torts: Negligence: Duty: Purveyors of Alcohol
Wis. Stat. § 125.035(2) (1997-98) clearly and unambiguously immunizes persons from civil liability in circumstances where one adult furnishes another with alcohol.

Governments: Legislation: Construction & Interpretation
A court must not expand a statute beyond its clear and unambiguous scope as intended by the legislature which is presumed to be fully familiar with well-established and long-standing legal principles.

JUDGES: Before Wedemeyer, P.J., Fine and Schudson, JJ.

OPINION BY: SCHUDSON

OPINION: P1. SCHUDSON, J. John H. Kreuser and his insurer, Sentry Insurance (collectively, "Kreuser") appeal from the nonfinal circuit court order denying their motion for summary judgment. n1 Kreuser argues that the court erred in concluding that *Wis. Stat. § 125.035(2)* (1997-98), n2 which he characterizes as "Wisconsin's Liquor Liability Immunity Statute," did not immunize him from liability for his alleged conduct in failing to drive another adult home after stating that he would do so.

n1 In an order dated August 8, 2000, we granted leave to appeal from the May 9, 2000 nonfinal order, but specified that interlocutory review would encompass only the circuit court's denial of the petitioners' motion for summary judgment.

n2 All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

[*2]

P2. We conclude that the circuit court correctly determined that Kreuser's alleged conduct fell outside the parameters of the immunity granted under *Wis. Stat. § 125.035(2)*. We further conclude that Kreuser's alleged conduct is encompassed by the standards declared in Restatement (Second) of Torts § 324A (1965), adopted by the Wisconsin Supreme Court and most recently reiterated in *Gritzner v. Michael R.*, 2000 WI 68, 235 Wis. 2d 781, 611 N.W.2d 906. Accordingly, we affirm.

I. BACKGROUND

P3. According to the amended complaint, on December 4, 1998, Kreuser was attending a "meeting" at the Silver Spring Country Club; the meeting was held by his employer, Universal Metrics, Inc., to "further the business interests of UMI by way of creating good will between it and its [sic] employees, and for purposes of increasing employee morale." Among the other Universal employees at the meeting was Michael T. Devine, who became intoxicated. Kreuser assured Silver Spring personnel that he would drive Devine home. Kreuser, however, failed to do so. Devine, driving away from the country club, crossed the center line on Silver Spring Road and struck[*3] a motor vehicle driven by Kathy Stephenson. Both Devine and Stephenson died as a result of the collision.

P4. Marge Kubowski, a Silver Spring bartender, testified at the inquest into the deaths of Stephenson and Devine. Her testimony, included in the summary judgment submissions, told of Kreuser's assurance that he would drive Devine home:

A: ... People just were making different comments about [Devine]. And at one point he came up to the bar and ordered a beer, and that is when I noticed that he had [had] too much to drink and I couldn't serve him.

Q: ... Do you recall at that point expressing concern that he should not drive, or he should get a ride?

A: That's correct.

Q: How did you express, did you verbalize that?

A: Yes, I did, more than once.

Q: And did you get any response from anybody?

A: Yes, I did.

Q: From whom?

A: A guy [Kreuser] that was standing by the bar that was standing next to this particular guy [Devine] that was not getting anything else to drink.

Q: What kind of response did you receive?

A: He acted like I was kidding at first, you know. He kind of chuckled back. And I said, "I'm being very serious. This man needs a ride home. He cannot [*4]leave this country club in this condition." And he said, "Don't worry, I'll give him a ride." And I said, "Are you sure?" And he said, "I promise I'll give him a ride home."

Kreuser, however, remembered it differently. At his deposition, he testified:

Q: Okay. After hearing the bartender ask Mike Devine whether he had a ride home, what did you do?

A: I had just turned to see what was going on, more or less, and Mike had made a motion like I was it.

Q: All right. And he made a motion with his head?

A: Yes.

Q: So you interpreted his motion to be a signal to the bartender to you that you were his ride home?

A: Uh-huh.

Q: Is that a yes?

A: Yes.

Q: So you saw him do that?

A: Yes.

Q: And she was looking at him when the bartender was looking at him when he did that?

A: Yes.

Q: And what did you do in response to that?

A: I just nodded my head.

Q: To who?

A: To the bartender.

Q: And by nodding your head you were indicating to the bartender that you were going to give him a ride home, correct?

A: Yes.

Irrespective of which version is correct (and we, of course, may not find facts, see *Wurtz v. Fleischman*, 97 Wis. 2d 100, 107 n.3, 293 N.W.2d 155 (1980) (court of appeals is precluded from making factual determinations when evidence is controverted)), the upshot of both versions is that Kreuser voluntarily agreed to drive Devine home. n3

n3 Kreuser's brief-in-chief to this court, without providing any record reference, states: "Kreuser said nothing, but simply nodded his head once affirmatively." Further, neither of Kreuser's briefs on appeal referred us to Kubowski's inquest testimony, in which she stated that Kreuser did more than merely "nod" his assent to assuming the burden of driving Devine home.

Under our view of the Rules of Professional Conduct for Attorneys, a lawyer has a duty to disclose important information to an appellate tribunal even though it may be adverse to his or her client's position. See SCR 20:3.3(a)(3) (2000) ("A lawyer shall not knowingly ... fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel."). And, of course, lawyers may not knowingly make any misrepresentation to a tribunal. See SCR 20:3.3(a)(1) (2000) (forbidding counsel from knowingly "making a false statement of fact or law to a tribunal").[*5]

Here, we recognize that Kreuser's counsel's representations were ones of fact, not law, and that the countervailing factual version subsequently was presented by Stephenson's counsel in respondent's appel-

late brief. We also accept that Kreuser's counsel accurately related Kreuser's version of what took place. An acknowledgment of Kubowski's version, however, would have been appropriate under the rules of appellate procedure. See *Wis. Stat. § 809.19(1)(d)* (appellant's brief must contain a statement of the case, which is required to include "a description of the nature of the case; the procedural status of the case leading up to the appeal; the disposition in the trial court; and a statement of facts relevant to the issues presented for review, with appropriate references to the record"). (Emphasis added.) We also remind counsel that the rules require a record reference for each statement of fact presented in a brief. See *id.*

P5. Kathy Stephenson's husband, individually and as the personal representative of her estate, brought an action against several defendants including Universal, Kreuser, their insurers, and the insurer providing both liability coverage to Devine and underinsured motorist coverage to Kathy Stephenson. The circuit court granted summary judgment to Universal and its insurer, West American, concluding that, pursuant to *Greene v. Farnsworth*, 188 Wis. 2d 365, 525 N.W.2d 107 (Ct. App. 1994), under *Wis. Stat. § 125.035(2)*, they were immune from liability. The court also concluded, however, that under *Gritzner v. Michael R.*, 228 Wis. 2d 541, 598 N.W.2d 282 (Ct. App. 1999), n4 Kreuser was not immune.

n4 At the time of the circuit court decision, the supreme court had not decided *Gritzner v. Michael R.*, 2000 WI 68, 235 Wis. 2d 781, 611 N.W.2d 906, affirming, in part, this court's decision in *Gritzner v. Michael R.*, 228 Wis. 2d 541, 598 N.W.2d 282 (Ct. App. 1999).

[*6]

II. DISCUSSION

P6. As this court has explained:

"Summary judgment is appropriate to determine whether there are any disputed factual issues for trial and 'to avoid trials where there is nothing to try.'" While we apply the same methodology as the trial court when reviewing summary judgment, we owe no deference to the conclusion of the trial court. We first examine the plead-

ings to determine whether they state a claim for relief. If the pleadings state a claim and the responsive pleadings join the issue, we then must examine the evidentiary record to analyze whether a genuine issue of material fact exists or whether either party is entitled to a judgment as a matter of law.

Kotecki & Radtke, S.C. v. Johnson, 192 Wis. 2d 429, 436-37, 531 N.W.2d 606 (Ct. App. 1995) (citations omitted).

P7. The Wisconsin Supreme Court has adopted the negligence standards articulated in Restatement (Second) of Torts § 324A (1965). "Liability to Third Person for Negligent Performance of Undertaking." *Am. Mut. Liab. Ins. Co. v. St. Paul Fire & Marine Ins. Co.*, 48 Wis. 2d 305, 313, 179 N.W.2d 864 (1970); *Gritzner*, 2000 WI 68 at P56. [*7] The Restatement provides:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to [perform] n5 his undertaking, if

(a) his failure to exercise reasonable care increases the risk of such harm, or

(b) he has undertaken to perform a duty owed by the other to the third person, or

(c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

Restatement (Second) of Torts § 324A (1965) (emphases and footnote added.)

n5 "The use of the word 'protect' in the introductory portion [of Restatement (Second) of Torts § 324A] apparently was a typographical error published in the Restatement and should read 'perform.'" *Miller v. Bristol-Myers Co.*, 168 Wis. 2d 863, 883 n.7, 485 N.W.2d 31 (1992).

[*8] P8. Kreuser does not dispute that, at least in theory, the words of the Restatement could encompass the allegations against him. After all, as he must concede, the amended complaint alleges that he "voluntarily assumed a duty" to render services to Devine under circumstances

in which he knew or should have known that any failure to perform those services would create "an unreasonable risk of harm" to Devine and others. Kreuser argues, however, that "the liability of an adult charged with the care of a minor," considered in *Gritzner*, cannot "be equated to the liability of an employee for another's actions at an employer-sponsored Christmas party." Further, Kreuser argues, any liability he otherwise might have for failing to drive Devine home is precluded by the immunity granted under *Wis. Stat. § 125.035(2)*. We disagree.

P9. First, although *Gritzner* did involve questions of an adult's liability for his alleged negligent failure to warn others of a ten-year-old child's "propensity to engage in inappropriate sexual acts" with other children, and for his alleged negligent failure to control the child's conduct, *Gritzner*, 2000 WI 68 at PP2, 7, [*9] the supreme court's discussion of the Restatement's "Liability to Third Person for Negligent Performance of Undertaking" is not limited to those facts. *Id.* at P56. Indeed, the supreme court emphasized that the Restatement's "standard of conduct applies to anyone 'who, having no duty to act, gratuitously undertakes to act and does so negligently.'" *Id.* (emphasis added) (quoting *Am. Mut. Liab. Ins. Co.*, 48 Wis. 2d at 313, a case involving whether a boiler insurer had negligently performed boiler inspections). Thus, we conclude, the Restatement's standards do apply to Kreuser's liability to third persons for his alleged negligent failure to perform the undertaking he promised to render.

P10. Second, we read nothing in *Wis. Stat. § 125.035(2)* to immunize Kreuser from his potential liability for negligent failure to perform the undertaking he allegedly promised.

P11. The interpretation of *Wis. Stat. § 125.035(2)* presents a question of law, which we review de novo. *Greene*, 188 Wis. 2d at 370. *Wisconsin Stat. § 125.035(2)* provides: "A[*10] person is immune from civil liability arising out of the act of procuring alcohol beverages for or selling, dispensing or giving away alcohol beverages to another person." The statute is clear. As we explained, it "clearly and unambiguously immunizes persons from civil liability in circumstances ... where one adult fur-

nishes another with alcohol." *Greene*, 188 Wis. 2d at 370. Here, Kreuser is not alleged to have furnished Devine with alcohol. Kreuser's liability does not rest on any allegation that he was, in the words of the statute, "procuring alcohol beverages for or selling, dispensing or giving away alcohol beverages to [Devine]." See *Wis. Stat. § 125.035(2)*.

P12. Kreuser contends, however, that if "procuring," under *Wis. Stat. § 125.035(2)*, does not encompass his alleged conduct, an unreasonable result is inevitable. He points out that bartenders and even drinking companions who encourage a person to get drunk and drive could be immune, see *Greene*, 188 Wis. 2d at 370-72, but a designated driver who fails to fulfill his responsibility could be liable. Thus, he maintains, rejection[*11] of his position "may utterly destroy budding designated driver programs in this state, because designated drivers may fear liability for inadequately performing or failing to perform their voluntary duty."

P13. We acknowledge that Kreuser may have identified a potentially ironic result flowing from the interplay of *Wis. Stat. § 125.035(2)* and the legal principles recognized by the Restatement. We must not, however, expand the statute beyond its clear and unambiguous scope as intended by the legislature which, we presume, was fully familiar with the well-established and long-standing principle that those who voluntarily assume a duty are liable if they breach that duty.

P14. We see nothing in *Wis. Stat. § 125.035(2)* that would trump the applicability of the Restatement here and thus remove from the Restatement's reach those who clearly fall within its scope. And, absent a legislative pronouncement requiring us to do so, we certainly will not relieve designated drivers, and others who volunteer to drive intoxicated individuals home, of liability for their failure to fulfill responsibilities they have assumed voluntarily.

By the [*12] Court.-Order affirmed.

Recommended for publication in the official reports.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3340/1

ARG: /:....
WJ

2001 BILL

D-Note

1 AN ACT ^{GEN} relating to: civil liability relating to alcohol beverages.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, a person is immune from civil liability arising from the act of procuring alcohol beverages for or selling, dispensing, or giving away alcohol beverages to another person. In the recent case of Stephenson v. Universal Metrics, 2001 WI App 128 (May 15, 2001), the defendant stated that he would provide transportation for an intoxicated person from a work-related social event, and then failed to do so. The plaintiff was killed by the intoxicated person in an automobile accident that occurred as the intoxicated person drove home from the social event. The Wisconsin court of appeals held that the defendant was not immune from liability for offering to provide transportation for an intoxicated person and then failing to do so.

This bill provides that no civil liability may be imposed on a person for the act of offering, in good faith, to furnish transportation for an intoxicated person and then failing to provide transportation if the intoxicated person causes the death of or injury to a third party by means of the intoxicated person's operation of a motor vehicle.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 125.036 of the statutes is created to read:

BILL

SECTION 1

125.036 Civil liability exemption: offering to furnish transportation.

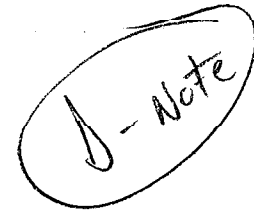
(1) In this section, "person" has the meaning given in s. 990.01 (26).[✓]

^③
(2) Any person who in good faith offers to furnish transportation for an intoxicated person is immune from civil liability for the death of or injury to the intoxicated person or a third² party caused by the intoxicated person's operation of a motor vehicle.

SECTION 2. Initial applicability.

(1) This act first applies to offers to furnish transportation made on the effective date of this subsection.

(END)

A handwritten note "J-Note" is enclosed in a hand-drawn oval in the lower right quadrant of the page.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3340/1dn

ARG./.....

Wlj

The attached draft provides immunity to a person who offers to furnish transportation to "an intoxicated person" but fails to do so. The immunity would therefore only arise if the person to whom the offer is made is deemed to be intoxicated. Is this consistent with your intent?

In the attached draft, immunity is conditioned upon the offer to furnish transportation being "in good faith." Is this consistent with your intent?

The attached draft applies prospectively to offers to furnish transportation made on or after the effective date. Is this consistent with your intent?

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3340/1dn
ARG:wlj:kjf

July 18, 2001

The attached draft provides immunity to a person who offers to furnish transportation to "an intoxicated person" but fails to do so. The immunity would therefore only arise if the person to whom the offer is made is deemed to be intoxicated. Is this consistent with your intent?

In the attached draft, immunity is conditioned upon the offer to furnish transportation being "in good faith." Is this consistent with your intent?

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Gary, Aaron

From: Manley, Scott
Sent: Monday, October 15, 2001 12:00 PM
To: Gary, Aaron
Subject: RE: LRB-3340

Aaron,

It is the Senator's intent that the immunity apply regardless of whether the intoxicated person was intoxicated at the time the offer was made.

If possible, please email an electronic copy of the redraft when it is complete.

Thank you!

Scott Manley

-----Original Message-----

From: Gary, Aaron
Sent: Monday, October 15, 2001 11:34 AM
To: Manley, Scott
Subject: LRB-3340

Scott,

Per our conversation this morning, I reviewed the subsequent case history of *Stephenson v. Universal Metrice*. At this time, there has been no appeal to the Wisconsin Supreme Court. While there was a subsequent appeal in the case to the Court of Appeals, the issues in that appeal were not relevant to this bill. Accordingly, the decision on which the bill is based remains good law (and is a published decision).

As you requested, I will eliminate the "good faith" requirement from the draft.

It is also my understanding that you would like to make sure the draft provides immunity in situations where a person offers a ride to another person who is not yet intoxicated but later becomes intoxicated (in addition to situations where the ride is offered to someone who is already intoxicated). Is my understanding correct? If so, after reviewing the draft again, I would recommend slightly revising the draft to make sure this intent is clear. Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

2001 BILL

Seen

turned in
10/15/01

RMR

D-Note

Regen

- 1 AN ACT to create 125.036 of the statutes; relating to: civil liability relating to
2 alcohol beverages.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, a person is immune from civil liability arising from the act of procuring alcohol beverages for or selling, dispensing, or giving away alcohol beverages to another person. In the recent case of *Stephenson v. Universal Metrics*, 2001 WI App 128 (May 15, 2001), the defendant stated that he would provide transportation for an intoxicated person from a work-related social event and then failed to do so. The plaintiff was killed by the intoxicated person in an automobile accident that occurred as the intoxicated person drove home from the social event. The Wisconsin court of appeals held that the defendant was not immune from liability for offering to provide transportation for an intoxicated person and then failing to do so.

This bill provides that no civil liability may be imposed on a person for the act of offering ~~in good faith~~ to furnish transportation for ~~an intoxicated person~~ and then failing to provide transportation if the intoxicated person causes the death of or injury to a third party by means of the intoxicated person's operation of a motor vehicle.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

who is or later becomes intoxicated

another
mmmm

BILL

1 SECTION 1. 125.036 of the statutes is created to read:

2 **125.036 Civil liability exemption: offering to furnish transportation.**

3 (1) In this section, "person" has the meaning given in s. 990.01 (26).

4 (2) Any person who ~~in good faith~~ offers to furnish transportation for ~~an~~ another
5 ~~intoxicated~~ person is immune from civil liability for the death of or injury to the
6 intoxicated person or a third party caused by the intoxicated person's operation of a
7 motor vehicle.

8 **SECTION 2. Initial applicability.**

9 (1) This act first applies to offers to furnish transportation made on the effective
10 date of this subsection.

11 (END)

who is or later becomes intoxicated ✓

D-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3340/2dn

ARG:.....
Jld

As requested, the attached draft eliminates the requirement set forth in LRB-3340/1 that the offer to furnish transportation be made "in good faith" and clarifies that immunity will apply even if the offer of transportation is made with regard to a person who is not yet intoxicated but later becomes intoxicated.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3340/2dn
ARG:jld:pg

October 16, 2001

As requested, the attached draft eliminates the requirement set forth in LRB-3340/1 that the offer to furnish transportation be made "in good faith" and clarifies that immunity will apply even if the offer of transportation is made with regard to a person who is not yet intoxicated but later becomes intoxicated.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us



2001 BILL

RMR
now
10/16/01

Regen

- 1 AN ACT *to create* 125.036 of the statutes; **relating to:** civil liability relating to
2 alcohol beverages.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, a person is immune from civil liability arising from the act of procuring alcohol beverages for or selling, dispensing, or giving away alcohol beverages to another person. In the recent case of *Stephenson v. Universal Metrics*, 2001 WI App 128 (May 15, 2001), the defendant stated that he would provide transportation for an intoxicated person from a work-related social event and then failed to do so. The plaintiff was killed by the intoxicated person in an automobile accident that occurred as the intoxicated person drove home from the social event. The Wisconsin court of appeals held that the defendant was not immune from liability for offering to provide transportation for an intoxicated person and then failing to do so.

This bill provides that no civil liability may be imposed on a person for the act of offering to furnish transportation for another person who is ~~later~~ or later becomes intoxicated and then failing to provide transportation if the intoxicated person causes the death of or injury to a third party by means of the intoxicated person's operation of a motor vehicle.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

BILL

SECTION 1. 125.036 of the statutes is created to read:

125.036 Civil liability exemption: offering to furnish transportation.

(1) In this section, “person” has the meaning given in s. 990.01 (26).

(2) Any person who offers to furnish transportation for another person who is or later becomes intoxicated is immune from civil liability for the death of or injury to the intoxicated person or a third party caused by the intoxicated person's operation of a motor vehicle.

SECTION 2. Initial applicability.

(1) This act first applies to offers to furnish transportation made on the effective date of this subsection.

(END)



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

October 16, 2001

MEMORANDUM

To: Senator Huelsman

From: Aaron R. Gary, Attorney

Re: LRB-3340/3 Immunity for a person who fails to provide transportation to an intoxicated person

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

____ JACKET FOR ASSEMBLY ☒ JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 261-6926 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.

Emery, Lynn

From: Emery, Lynn
Sent: Wednesday, October 17, 2001 9:41 AM
To: Sen.Huelsman
Subject: LRB-3340/3 (attached as requested)

Lynn Emery

Lynn Emery - Program Asst. (PH. 608-266-3561)
(E-Mail: lynn.emery@legis.state.wi.us) (FAX: 608-264-6948)

Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

10/17/2001